

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2010100605

ORDER GRANTING DISTRICT'S  
MOTION TO DISMISS STUDENT'S  
PROPOSED REMEDY FOR  
PROSPECTIVE PLACEMENT AT  
SAINT JOHN THE BAPTIST  
CATHOLIC SCHOOL

On October 11, 2010, Student filed a request for due process hearing (complaint) naming the Newport-Mesa Unified School District (District). On November 1, 2010, the District filed a motion to dismiss Student's proposed remedy which requests that the Office of Administrative Hearings (OAH) order the District to prospectively place Student at the parochial school she is now attending. Student filed an opposition to the District's motion on November 3, 2010. Because the District is correct that state law prevents OAH from ordering prospective placement of students at private schools that have not been certified as a nonpublic school, the District's motion is granted.

BACKGROUND FACTS AND STATEMENT OF THE ISSUES

In her complaint, Student contends that the District denied her a free appropriate public education (FAPE) by failing to provide her with an appropriate interim placement when Student re-enrolled in the District after having attended school in another school district for approximately two years. Student asserts that as a result of the District's failure to offer her an appropriate placement, her parents privately placed her at Saint John the Baptist Catholic School (Saint John's). As proposed remedies, Student requests that OAH order the District, in pertinent part, to reimburse her parents for costs they have incurred to date for Student's placement at St John's, and that the District be ordered to prospectively place Student at Saint John's for the remainder of the 2010-2011 school year.

In its motion, the District contends that Student's proposed remedy for prospective placement at Saint John's must be dismissed because Saint John's is not a certified non-public school. Rather, it is a religious school which is not certified by the California Department of Education. Student responds that her parents have a right to seek reimbursement for the costs they incurred for privately placing Student if OAH finds that the District has denied her a FAPE. She also contends that the fact that Saint John's is a sectarian school and is not specifically designed as a school for disabled students should not prevent reimbursement to Student's parents for their costs. Student quotes alleged court

decisions regarding reimbursement to parents for expenses incurred at sectarian schools, but does not provide the citation to the case she purports to quote.

## ANALYSIS OF THE ISSUES

As an initial observation, the undersigned Administrative Law Judge (ALJ) notes that Student misunderstands the District's motion. The District specifically states that it is moving to dismiss Student's request for *prospective placement* at Saint John's. It does not move for dismissal of Student's request for *reimbursement for costs already incurred*. This distinction is an important one because the District is correct that state law prevents OAH from ordering prospective placement at an uncertified school. There is no state statutory prohibition, however, that prevents OAH from ordering reimbursement for costs incurred at a non-certified school if the facts of the case warrant reimbursement. The District recognizes this distinction by emphasizing that its motion is limited only to that portion of Student's remedy that seeks prospective placement at Saint John's.

Two sections of the Education Code inform the ALJ's decision to grant the District's motion. First, as the District cites in its motion, Education Code section 56034 defines a non-public school as a non-sectarian school that is certified by the Department of Education. There is no provision under the Education Code for the certification of sectarian or parochial schools as a non-public school.

Second, Education Code section 56505.2, subdivision (a) specifically states that "[a] hearing officer may not render a decision that results in the placement of an individual with exceptional needs in a nonpublic, nonsectarian school, . . . if the school . . . has not been certified [by the California Department of Education (CDE)] pursuant to Education Code section 56366.1." Although Student in her opposition disputes that the curriculum at Saint John's is religiously based, and although she asserts that religious observance is not required there, she does not dispute that Saint John's is a Catholic school and that it is sectarian. Nor does Student assert that Saint John's has been certified by the Department of Education as a non-public school.

OAH is therefore prevented by state statute from ordering the District to prospectively place Student at Saint John's or rendering a decision that would result in her placement there. The District's motion to dismiss Student's proposed remedy asking for prospective placement at Saint John's or reimbursement for prospective placement is therefore granted.

IT IS SO ORDERED.

Dated: November 05, 2010

/s/

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DARRELL LEPKOWSKY  
Administrative Law Judge  
Office of Administrative Hearings